



General Assembly

Amendment

February Session, 2010

LCO No. 5323

HB0534805323HD0

Offered by:

REP. MUSHINSKY, 85th Dist.

To: Subst. House Bill No. 5348

File No. 490

Cal. No. 292

***"AN ACT IMPLEMENTING ADDITIONAL RECOMMENDATIONS OF
THE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE
CONCERNING RETALIATION FOR WHISTLEBLOWER
COMPLAINTS."***

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 4-61dd of the 2010 supplement to the general
4 statutes is repealed and the following is substituted in lieu thereof
5 (*Effective October 1, 2010*):

6 (a) Any person having knowledge of any matter involving
7 corruption, unethical practices, violation of state laws or regulations,
8 mismanagement, gross waste of funds, abuse of authority or danger to
9 the public safety occurring in any state department or agency or any
10 quasi-public agency, as defined in section 1-120, or any person having
11 knowledge of any matter involving corruption, violation of state or

12 federal laws or regulations, gross waste of funds, abuse of authority or
13 danger to the public safety occurring in any large state contract, may
14 transmit all facts and information in such person's possession
15 concerning such matter to the Auditors of Public Accounts. [The
16 Auditors of Public Accounts shall review such matter and report their
17 findings and any recommendations to the Attorney General. Upon
18 receiving such a report, the Attorney General shall make such
19 investigation as the Attorney General deems proper regarding such
20 report and any other information that may be reasonably derived from
21 such report. Prior to conducting an investigation of any information
22 that may be reasonably derived from such report, the Attorney
23 General shall consult with the Auditors of Public Accounts concerning
24 the relationship of such additional information to the report that has
25 been issued pursuant to this subsection. Any such subsequent
26 investigation deemed appropriate by the Attorney General shall only
27 be conducted with the concurrence and assistance of the Auditors of
28 Public Accounts. At the request of the Attorney General or on their
29 own initiative, the auditors shall assist in the investigation.] The
30 Auditors of Public Accounts or Attorney General shall investigate such
31 matter.

32 (b) The Auditors of Public Accounts and the Attorney General shall
33 enter into a memorandum of understanding in order to develop a
34 system for jointly managing complaints received pursuant to
35 subsection (a) of this section and the assignment of such complaints
36 appropriately. The Auditors of Public Accounts or the Attorney
37 General may reject any such complaint if either the Auditors of Public
38 Accounts or the Attorney General determines one or more of the
39 following:

40 (1) There are other available remedies that the complainant can
41 reasonably be expected to pursue;

42 (2) The matter complained of is better suited for investigation or
43 enforcement by another state agency;

44 (3) The complaint is trivial, frivolous, vexatious or not made in good
45 faith;

46 (4) Other complaints have greater priority in terms of serving the
47 public good;

48 (5) Investigation into the complaint would require resources that
49 either the Auditors of Public Accounts or the Attorney General lack; or

50 (6) The complaint is not timely or too long delayed to justify further
51 investigation.

52 (c) If at any time the Auditors of Public Accounts or the Attorney
53 General determines that a complaint is more appropriately
54 investigated by another state agency, the Auditors of Public Accounts
55 or the Attorney General shall refer the complaint to such agency. The
56 investigating agency shall provide a status report regarding the
57 referred complaint to the Auditors of Public Accounts or the Attorney
58 General upon request. The Attorney General [shall have power to]
59 may summon witnesses, require the production of any necessary
60 books, papers or other documents and administer oaths to witnesses,
61 where necessary, for the purpose of an investigation pursuant to this
62 section or for the purpose of investigating a suspected violation of
63 subsection (a) of section 17b-301b until such time as the Attorney
64 General files a civil action pursuant to section 17b-301c. Upon the
65 conclusion of the investigation, the Attorney General shall where
66 necessary, report any findings to the Governor, or in matters involving
67 criminal activity, to the Chief State's Attorney. In addition to the
68 exempt records provision of section 1-210, the Auditors of Public
69 Accounts and the Attorney General shall not, after receipt of any
70 information from a person under the provisions of this section or
71 sections 17b-301c to 17b-301g, inclusive, disclose the identity of such
72 person without such person's consent unless the Auditors of Public
73 Accounts or the Attorney General determines that such disclosure is
74 unavoidable, and may withhold records of such investigation, during
75 the pendency of the investigation.

76 (d) (1) Upon the request of the person who makes a complaint in
77 accordance with subsection (a) of this section, the Auditors of Public
78 Accounts or the Attorney General shall inform such person of the
79 outcome of the investigation of such complaint, including whether the
80 matter has been rejected pursuant to subsection (b) of this section or
81 referred to another agency pursuant to subsection (c) of this section. If,
82 at the conclusion of an investigation, the Auditors of Public Accounts
83 or the Attorney General find such matter to be substantiated and
84 require corrective action on the part of the state agency, quasi-public
85 agency or large state contractor, the Auditors of Public Accounts and
86 the Attorney General, not later than a year after requiring such action,
87 shall determine whether such corrective action has been taken. If they
88 determine that the state agency, quasi-public agency or large state
89 contractor has not taken such corrective action, they shall report such
90 noncompliance to the Governor.

91 (2) The Auditors of Public Accounts and the Attorney General shall
92 each post on their agency Internet web sites a summary of all matters
93 investigated by their agencies. Such summary shall include, but not be
94 limited to, the number of complaints for each state agency, quasi-
95 public agency or large state contractor, a description of the type of
96 allegations made, the date each such matter was referred to the
97 auditors or Attorney General and the status and disposition of each
98 such matter, including whether the allegation has been substantiated
99 in whole or in part and whether the agency or large state contractor
100 has attempted to take any corrective action. Such summary shall not
101 include the name of any large state contractor. Such summary shall be
102 updated every six months.

103 ~~[(b)]~~ (e) (1) No state officer or employee, as defined in section 4-141,
104 no quasi-public agency officer or employee, no officer or employee of a
105 large state contractor and no appointing authority shall take or
106 threaten to take any personnel action against any state or quasi-public
107 agency employee or any employee of a large state contractor in
108 retaliation for (A) such employee's [or contractor's] disclosure of
109 information to ~~[(A)]~~ (i) an employee of the Auditors of Public Accounts

110 or the Attorney General under the provisions of subsection (a) of this
111 section; [(B)] (ii) an employee of the state agency or quasi-public
112 agency where such state officer or employee is employed; [(C)] (iii) an
113 employee of a state agency pursuant to a mandated reporter statute or
114 pursuant to subsection (b) of section 17a-28; or [(D)] (iv) in the case of a
115 large state contractor, an employee of the contracting state agency
116 concerning information involving the large state contract; or (B) such
117 employee's testimony or assistance in any proceeding under this
118 section.

119 [(2) If a state or quasi-public agency employee or an employee of a
120 large state contractor alleges that a personnel action has been
121 threatened or taken in violation of subdivision (1) of this subsection,
122 the employee may notify the Attorney General, who shall investigate
123 pursuant to subsection (a) of this section.]

124 [(3)] (2) (A) Not later than [thirty] ninety days after learning of the
125 specific incident giving rise to a claim that a personnel action has been
126 threatened or has occurred in violation of subdivision (1) of this
127 subsection, a state or quasi-public agency employee, an employee of a
128 large state contractor or the employee's attorney may file a complaint
129 against the state agency, quasi-public agency, large state contractor or
130 appointing authority concerning such personnel action with the Chief
131 Human Rights Referee designated under section 46a-57. Such
132 complaint may be amended if an additional incident giving rise to a
133 claim under this subdivision occurs subsequent to the filing of the
134 original complaint. The Chief Human Rights Referee shall assign the
135 complaint to a human rights referee appointed under section 46a-57,
136 who shall conduct a hearing and issue a decision concerning whether
137 the officer or employee taking or threatening to take the personnel
138 action violated any provision of this section. [If] The human rights
139 referee may order a state agency or quasi-public agency to produce (i)
140 an employee of such agency or quasi-public agency to testify as a
141 witness in any proceeding under this subdivision, or (ii) books, papers
142 or other documents relevant to the complaint, without issuing a
143 subpoena. If such agency or quasi-public agency fails to produce such

144 witness, books, papers or documents, not later than thirty days after
145 issuing such order, the human rights referee may consider such failure
146 as supporting evidence for the complainant. If, during the pendency of
147 the hearing, the human rights referee has reasonable cause to believe
148 that any officer or employee has taken personnel action in violation of
149 subdivision (1) of this subsection, such referee may order temporary
150 equitable relief, including, but not limited to, an order reinstating the
151 person filing the complaint to the same position held before such
152 personnel action was taken. If, after the hearing, the human rights
153 referee finds [such] a violation, the referee may award the aggrieved
154 employee reinstatement to the employee's former position, back pay
155 and reestablishment of any employee benefits for which the employee
156 would otherwise have been eligible if such violation had not occurred,
157 reasonable attorneys' fees, and any other damages. For the purposes of
158 this subsection, such human rights referee shall act as an independent
159 hearing officer. The decision of a human rights referee under this
160 subsection may be appealed by any person who was a party at such
161 hearing, in accordance with the provisions of section 4-183.

162 (B) The Chief Human Rights Referee shall adopt regulations, in
163 accordance with the provisions of chapter 54, establishing the
164 procedure for filing complaints and noticing and conducting hearings
165 under subparagraph (A) of this subdivision.

166 [(4) As an alternative to the provisions of subdivisions] (3) Any state
167 or quasi-public agency employee or large state contractor employee
168 who has not pursued a remedy under subdivision (2) [and (3)] of this
169 subsection may, in the case of: (A) A state or quasi-public agency
170 employee who alleges that a personnel action has been threatened or
171 taken, [may] file an appeal not later than [thirty] ninety days after
172 learning of the specific incident giving rise to such claim with the
173 Employees' Review Board under section 5-202, or, in the case of a state
174 or quasi-public agency employee covered by a collective bargaining
175 contract, in accordance with the procedure provided by such contract;
176 or (B) an employee of a large state contractor alleging that such action
177 has been threatened or taken, [may,] after exhausting all available

178 administrative remedies, bring a civil action in accordance with the
179 provisions of subsection (c) of section 31-51m.

180 [(5)] (4) In any proceeding under subdivision (2) [.] or (3) [or (4)] of
181 this subsection concerning a personnel action taken or threatened
182 against any state or quasi-public agency employee or any employee of
183 a large state contractor, which personnel action occurs not later than
184 [one year] two years after the employee first transmits facts and
185 information concerning a matter under subsection (a) of this section or
186 subdivision (1) of this subsection to the Auditors of Public Accounts,
187 [or] the Attorney General or an employee of a state agency or quasi-
188 public agency, as applicable, there shall be a rebuttable presumption
189 that the personnel action is in retaliation for the action taken by the
190 employee under subsection (a) of this section or subdivision (1) of this
191 subsection.

192 [(6)] (5) If a state officer or employee, as defined in section 4-141, a
193 quasi-public agency officer or employee, an officer or employee of a
194 large state contractor or an appointing authority takes or threatens to
195 take any action to impede, fail to renew or cancel a contract between a
196 state agency and a large state contractor, or between a large state
197 contractor and its subcontractor, in retaliation for the disclosure of
198 information pursuant to subsection (a) of this section or subdivision (1)
199 of this subsection to any agency listed in subdivision (1) of this
200 subsection, such affected agency, contractor or subcontractor may, not
201 later than ninety days after learning of such action, threat or failure to
202 renew, bring a civil action in the superior court for the judicial district
203 of Hartford to recover damages, attorney's fees and costs.

204 [(c)] (f) Any employee of a state or quasi-public agency or large state
205 contractor, who is found by the Auditors of Public Accounts, the
206 Attorney General, a human rights referee or the Employees' Review
207 Board to have knowingly and maliciously made false charges under
208 subsection (a) of this section, shall be subject to disciplinary action by
209 such employee's appointing authority up to and including dismissal.
210 In the case of a state or quasi-public agency employee, such action

211 shall be subject to appeal to the Employees' Review Board in
212 accordance with section 5-202, or in the case of state or quasi-public
213 agency employees included in collective bargaining contracts, the
214 procedure provided by such contracts.

215 [(d)] (g) On or before September first, annually, the Auditors of
216 Public Accounts and the Attorney General shall submit, in accordance
217 with the provisions of section 11-4a, to the clerk of each house of the
218 General Assembly a joint report indicating the number of matters for
219 each agency or large state contractor for which facts and information
220 were transmitted to the auditors pursuant to this section during the
221 preceding state fiscal year, [and the] a description of the type of
222 allegations made, the date each such matter was referred to the
223 auditors and the status and disposition of each such matter, including
224 whether the allegation has been substantiated in whole or in part and
225 whether the agency or large state contractor has attempted to take any
226 corrective action.

227 [(e)] (h) Each contract between a state or quasi-public agency and a
228 large state contractor shall provide that, if an officer, employee or
229 appointing authority of a large state contractor takes or threatens to
230 take any personnel action against any employee of the contractor in
231 retaliation for such employee's disclosure of information to any
232 employee of the contracting state or quasi-public agency or the
233 Auditors of Public Accounts or the Attorney General under the
234 provisions of subsection (a) or subdivision (1) of subsection (b) of this
235 section, the contractor shall be liable for a civil penalty of not more
236 than five thousand dollars for each offense, up to a maximum of
237 twenty per cent of the value of the contract. Each violation shall be a
238 separate and distinct offense and in the case of a continuing violation
239 each calendar day's continuance of the violation shall be deemed to be
240 a separate and distinct offense. The executive head of the state or
241 quasi-public agency may request the Attorney General to bring a civil
242 action in the superior court for the judicial district of Hartford to seek
243 imposition and recovery of such civil penalty.

244 ~~[(f)] (i) Each state agency or quasi-public agency shall post a notice~~
245 ~~of the provisions of this section relating to state employees and quasi-~~
246 ~~public agency employees in a conspicuous place that is readily~~
247 ~~available for viewing by employees of such agency or quasi-public~~
248 ~~agency.~~ Each large state contractor shall post a notice of the provisions
249 of this section relating to large state contractors in a conspicuous place
250 which is readily available for viewing by the employees of the
251 contractor.

252 ~~[(g)] (j)~~ No person who, in good faith, discloses information [to the
253 Auditors of Public Accounts or the Attorney General] in accordance
254 with the provisions of this section shall be liable for any civil damages
255 resulting from such good faith disclosure.

256 ~~[(h)] (k)~~ As used in this section:

257 (1) "Large state contract" means a contract between an entity and a
258 state or quasi-public agency, having a value of five million dollars or
259 more; and

260 (2) "Large state contractor" means an entity that has entered into a
261 large state contract with a state or quasi-public agency.

262 Sec. 2. Subdivision (13) of subsection (b) of section 1-210 of the 2010
263 supplement to the general statutes is repealed and the following is
264 substituted in lieu thereof (*Effective October 1, 2010*):

265 (13) Records of an investigation or the name of an employee
266 providing information under the provisions of section 4-61dd or
267 sections 17b-301c to 17b-301g, inclusive, except that the summary
268 posted in accordance with subsection (d) of section 4-61dd, as
269 amended by this act, and the report submitted in accordance with
270 subsection (g) of section 4-61dd, as amended by this act, shall not be
271 considered records of an investigation for purposes of this
272 subdivision;"

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	4-61dd
Sec. 2	<i>October 1, 2010</i>	1-210(b)(13)